Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Applications of Tribune Media Company and Sinclair Broadcast Group for Consent to Transfer Control of Licenses and Authorizations	)	MB Docket No. 17-179
	)	
	)	

REPLY

AMERICAN CABLE ASSOCIATION

The American Cable Association hereby submits this brief Reply to two responses to ACA's Petition to Deny.[1] Fox appears to have misconstrued ACA's objection to its application to purchase stations that Sinclair and Tribune seek to divest, and thus fails to dispute the harm cited by ACA.[2] More importantly, Fox *still* has not made even a rudimentary public interest showing in favor of its divestiture applications. On this record, the Commission has no basis upon which to grant the Fox divestiture

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1 Response of 21st Century Fox, Inc. and Fox Television Stations, LLC (collectively, "Fox") to Petitions to Deny, MB Docket No. 17-179 (filed July 5, 2018) ("Response"); Applicants' Second Consolidated Opposition to Petitions to Deny, MB Docket No. 17-179 (filed July 5, 2018) ("Opposition"); Petition to Deny of the American Cable Association, MB Docket No. 17-179 (filed June 20, 2018) ("Petition").

2 *Media Bureau Establishes Consolidated Pleading Cycle for Amendments to the June 26, 2017, Applications to Transfer Control of Tribune Media Company to Sinclair Broadcast Group, Inc., Related New Divestiture Applications, and Top-Four Showings in Two Markets*, Public Notice, DA 18-530, MB Docket No. 17-179 (rel. May 21, 2018) ("*May Public Notice*").

applications. Sinclair and Tribune, for their part, misstate ACA's concerns about whether Sinclair would "acquire" Tribune stations prior to divestiture. Because Sinclair and Tribune apparently refuse to be bound by decades-old precedent in this regard, the Commission should either deny the transaction or appropriately condition it to eliminate any possible doubt.

1. Fox. Fox claims that we object to its acquisition of divestiture stations because such acquisitions would be unlawful under the national cap but for the UHF discount.[3] We made no such argument. We objected to Fox's acquisition of divestiture stations *regardless* of their compliance with the national ownership cap because the acquisitions will give Fox greater leverage in retransmission consent negotiations. This, in turn, will lead to higher retransmission consent fees and higher consumer prices.[4] We argued that increased consumer prices is a garden-variety public interest harm against which the Commission must balance public interest benefits—and because Fox did not grapple with this argument, it has not denied that these harms will occur. And we noted that Fox, for some reason, declined to assert any public interest benefits in its initial application that could potentially outweigh these harms. None of this has anything to do with whether Fox would exceed the national cap—an assertion that Fox describes as the "central premise" of our argument.[5]

More importantly, Fox *still* has yet to assert any public interest benefits accruing from its purchase of Sinclair-Tribune. Fox's response, like its initial application, contains

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3 Response at 1, 2.

4 Petition at 5.

5 Response at 2.

no such showing. In other words, Fox has made no claims that its proposed transaction would serve the public interest in any way. *We*, however, have shown that the proposed transaction will likely cause substantial harm to consumers in the form of higher cable bills. Under the "balancing test" by which the Commission has judged proposed license transfers for decades, we do not see how the Commission can permit the transaction to proceed in these circumstances.[6]

2. Sinclair and Tribune. ACA has asked the Commission to confirm that, under the *Phipps* precedent, Sinclair does not "acquire" or obtain "control" of Tribune stations divested immediately after the transaction closes, because Sinclair cannot lawfully do so under the Communications Act.[7] We did so because, otherwise, Sinclair

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6 Fox also claims that we have failed to demonstrate how the combination of Fox regional sports networks with owned and operated broadcast stations would give Fox more leverage. Response at 5. Yet the Commission itself has already made such a finding—which we cited to in our Petition. *Comcast Corp., Gen. Elec. Co. & NBC Universal, Inc.*, 26 FCC. Rcd. 4238, ¶ 138 (2011) ("We conclude that commenters have raised a legitimate concern about the effect the combination of Comcast's RSNs and the NBC O&O stations will have on carriage prices for both of those networks."). In any event, as Fox points out, which ACA previously acknowledged, Fox's sale of the RSNs would alleviate this particular concern (at least with respect to Fox itself).

7 *John H. Phipps, Inc. and WCTV Licensee Corp.*, 11 FCC Rcd. 13053, ¶ 9 (1996) ("By amending the agreements to make the pass-through virtually instantaneous, we believe that the parties have made clear their intention that the intermediary will not acquire or maintain control of the licenses."); 47 U.S.C. § 310(d) ("No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby. Any such application shall be disposed of as if the proposed transferee or assignee were making application under section 308 of this title for the permit or license in question; but in acting thereon the Commission may not consider whether the public interest, convenience, and necessity might be served by the transfer, assignment, or disposal of the permit or license to a person other than the proposed transferee or assignee.").

would be able to activate its after-acquired clauses for stations that it is supposed to be divesting—instantly increasing prices for subscribers in dozens of markets.

Sinclair could have responded by confirming this longstanding understanding of the law. Yet here again, it did not do so. Sinclair argues instead that the Commission in *Nexstar-Media General* declined to examine after-acquired clauses because they are "freely negotiated" between the parties and should do the same here.[8] But this misses the point entirely. The *Nexstar* case involved after-acquired clauses in stations the purchaser *actually acquired*. This involves the effect of such clauses in stations the purchaser *cannot lawfully purchase*. Moreover, we did not ask the Commission to opine on the clauses themselves. We simply asked that the Commission confirm that Sinclair cannot lawfully acquire or control the stations in question, even if they are transferred immediately upon closing.

That Sinclair cannot seem to agree to this uncontroversial position suggests to us that it *does* intend to assert that it "acquired" or "controlled" Tribune divestiture stations, regardless of the legal basis for such an argument, perhaps hoping that smaller MVPDs like ACA's members will lack the resources to litigate the issue. For this reason, if the Commission does not deny the transaction outright, it is imperative for the Commission to eliminate all doubt by conditioning the transaction on Sinclair *not* exercising its after-acquired clauses with respect to such stations.

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[8] Opposition at 11, *citing Media General/Nexstar*, 32 FCC Rcd. 183, ¶ 36 (2017).

Respectfully submitted,

AMERICAN CABLE ASSOCIATION

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Certificate of Service

I, Ross Lieberman, hereby certify that on this 12th day of July, 2018, true and correct copies of the foregoing Petition to Deny were sent by electronic mail (where indicated with an asterisk) and first-class mail to the following:

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